

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 Marcella Fox,

5 Plaintiff

6 v.

7 Ryan Kovacs, et al.,

8 Defendants

Case No. 2:24-cv-00047-CDS-NJK

**Omnibus Order Resolving Plaintiff's
Motions and Granting Defendants' Motions
to Dismiss**

[ECF Nos. 77, 80, 82, 90, 96, 100, 103, 104, 105,
112, 113, 123, 124]

9
10 Plaintiff Marcella Fox filed a first amended complaint (FAC) against defendants Ryan
11 Kovacs, Le Croque-Mitaine LLC, Orange Reality Group LLC, HopeLink of Southern Nevada,
12 and Jason Mattson alleging claims of (1) breach of implied warranty of habitability; (2)
13 negligence per se; (3) retaliation in violation of the Fair Housing Act; (4) constructive eviction;
14 (5) breach of covenant of quiet enjoyment; (6) violation of Section 504 of the Rehabilitation Act;
15 (7) intentional infliction of emotional distress; (8) negligent infliction of emotional distress; (9)
16 negligence; (10) breach of contract; (11) breach of the implied covenant of good faith and fair
17 dealing; (12) tortious interference with contractual relations; (13) negligent hiring, retention,
18 and supervision; (14) fraudulent misrepresentation; (15) unjust enrichment; and (16)
19 discrimination based on disability in violation of the Fair Housing Act, Americans with
20 Disabilities Act (ADA), and Section 504 of the Rehabilitation Act. *See generally* FAC, ECF No. 66.

21 Defendants Ryan Kovacs, Le Croque-Mitaine, LLC, Orange Realty Group LLC, and Jason
22 Mattson (collectively, "Kovacs defendants") and HopeLink of Southern Nevada move to dismiss.
23 *See* Kovacs defs.' mot. to dismiss, ECF No. 77; HopeLink's mot. to dismiss, ECF No. 82. Also
24 pending before the court are several outstanding motions filed by Fox.¹ This order resolves all
25 pending motions.

26 ¹ Fox's motion for sanctions (ECF No. 80) is denied. The decision of whether to stay discovery is entrusted to the "wide discretion" of the district court. *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). I find that defendants' motion to stay was brought in good faith and is warranted, so Judge

1 **I. Background²**

2 The following allegations give rise to this action. On March 16, 2022, Fox entered into a
 3 lease for a property located at 1405 Vegas Valley Dr., Apt. 305, Las Vegas, Nevada. FAC, ECF No.
 4 66 at ¶ 4. Fox alleges that after moving in she was “met with a relentless barrage of chronic
 5 flooding, toxic mold growth and infestations of vermin[.]” *Id.* Despite asking for “repairs and
 6 reasonable accommodations,” defendants “turn[ed] a blind eye, allowing these dangerous
 7 conditions to fester and multiply, with catastrophic consequences.” *Id.* Fox says that her
 8 children were denied access to their own bedrooms for months because they were “rendered
 9 uninhabitable due to severe water damage that stripped the floors away, exposing only cold,
 10 unforgiving cement[.]” and that “[m]old crept insidiously through the walls, while vermin thrived
 11 unchecked, creating a veritable toxic environment.” *Id.* at ¶ 6. She further alleges that
 12 “[d]efendants failed to replace . . . the drywall they removed from the master bathroom, leaving
 13 pipes exposed and further endangering the family’s safety[.]” and that defendants “neglected to
 14 provide basic security measures, such as adequate locking mechanisms on sliding doors[.]” *Id.*
 15 Fox alleges she has “meticulously documented” the hazardous conditions in her home which
 16 include flooding, water damage, infestations, mold, and structural damage. *Id.* at ¶¶ 7–11. Fox
 17 also alleges that she has suffered “lacerations from a broken window” and that the “heating and
 18 cooling systems were rendered non-functional.” *Id.* at ¶ 12. Fox states that the defendants are
 19 retaliating against her for complaining by issuing false “warning notices.” *Id.* at ¶ 13.

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 22 Koppe’s decision to grant it (*see* Order, ECF No. 127) was appropriate, thus there is no basis to sanction
 23 defendants. Further, Fox’s motion for leave to file excess pages (ECF No. 90) is denied as moot. The court
 24 notes that Fox has also filed two unauthorized surreplies to both motions to dismiss. *See* surreplies, ECF
 25 No. 112, ECF No. 113. The Local Rules make clear that surreplies are “not permitted without leave of
 26 court.” LR 7-2(b). Because these surreplies are unauthorized, they are stricken. Fox has also filed a
 renewed motion for judicial leniency (ECF No. 96), a motion for judicial estoppel (ECF No. 103), three
 motions for judicial notice (ECF Nos. 100, 104, 105) and a motion to compel a “federal audit of HopeLink
 of Southern Nevada and demand for criminal investigation into fraudulent misuse of funds” (ECF No.
 123). I address these motions in the body of this order.

² Unless otherwise noted, I only cite to the FAC (ECF No. 66) to provide context to this action, not to indicate a finding of fact.

1 **II. Legal standard**

2 The Federal Rules of Civil Procedure require a plaintiff to plead “a short and plain
3 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).
4 Dismissal is appropriate under Rule 12(b)(6) when a pleader fails to state a claim upon which
5 relief can be granted. Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A
6 pleading must give fair notice of a legally cognizable claim and the grounds on which it rests,
7 and although a court must take all factual allegations as true, legal conclusions couched as
8 factual allegations are insufficient. *Twombly*, 550 U.S. at 555. Accordingly, Rule 12(b)(6) requires
9 “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action
10 will not do.” *Id.* To survive a motion to dismiss, “a complaint must contain sufficient factual
11 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*,
12 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility
13 when the plaintiff pleads factual content that allows the court to draw the reasonable inference
14 that the defendant is liable for the misconduct alleged.” *Id.* This standard “asks for more than a
15 sheer possibility that a defendant has acted unlawfully.” *Id.*

16 If the court grants a motion to dismiss for failure to state a claim, leave to amend should
17 be granted unless it is clear that the deficiencies of the complaint cannot be cured by
18 amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Under Rule 15(a), a
19 court should “freely” give leave to amend “when justice so requires,” and in the absence of a
20 reason such as “undue delay, bad faith or dilatory motive of the part of the movant, repeated
21 failure to cure deficiencies by amendment previously allowed undue prejudice to the opposing
22 party by virtue of allowance of the amendment, futility of the amendment, etc.” *Foman v. Davis*,
23 371 U.S. 178 (1962).

1 III. Discussion

2 A. Fox's pending motions (ECF Nos. 80, 96, 100, 103, 104, 105, 123)

3 *1. Fox's renewed request for procedural leniency due to disability*
 4 *(ECF No. 96) is granted in part and denied in part.*

5 Fox files a "renewed request for procedural leniency due to disability." ECF No. 96. Fox
 6 previously filed a "request for procedural leniency due to disability" (ECF No. 86) which I
 7 denied because Fox failed to provide points and authorities to support her requests. Order, ECF
 8 No. 93. In her renewed motion, Fox cites 42 U.S.C. § 12131(2) and *Boag v. MacDougall*, 454 U.S. 364
 9 (1982) to support her requests. *See* ECF No. 96 at 3–5. But neither citation applies to Fox's
 10 requested relief. A federal court does not qualify as a public entity under 42 U.S.C. § 12131. A
 11 "public entity" is defined in 42 U.S.C. § 12131 as "(A) any State or local government; (B) any
 12 department, agency, special purpose district, or other instrumentality of a State or States or local
 13 government; and (C) the National Railroad Passenger Corporation, and any commuter
 14 authority." Thus, federal courts or any federal entities are not explicitly included in that
 15 definition. And the *MacDougall* decision does not address "procedural leniency." Rather, it
 16 addressed a mootness question regarding a civil action brought by an inmate of the Arizona
 17 Department of Corrections. Despite the lack of applicable points and authorities, I nonetheless
 18 address each request included her motion. *See* ECF No. 96 at 1, 6.

19 First, Fox's request that I grant a standing fourteen-day extension for filings "when
 20 necessary" is denied because there is no clear measure for what "when necessary" means, and the
 21 addition of fourteen days represents a seemingly arbitrary number. If Fox needs additional days
 22 to file specific motions, she can file a motion setting forth a specific request to extend the filing
 23 deadline, which should include the number of days she is requesting and the reasons for needing
 24 additional time. In the alternative, she may meet and confer with opposing counsel and enter
 25 into a stipulation to extend time. In either instance, Fox must comply with the local rules
 26 regarding such extension. *See* Local Rule 26-3.

1 Fox's request that she be granted CM/ECF electronic filing privileges is granted on the
 2 condition that Fox fill out and file the form titled "consent for electronic service of documents."³
 3 A review of the docket demonstrates that Fox has yet to complete this form, and Fox cannot opt
 4 in to electronic service of documents without submitting this form.

5 Fox's request that I provide real-time captioning and/or transcripts for all hearings is
 6 outside the scope of what this court can provide. Therefore, this request is denied. However, if
 7 ever needed, Fox may request a listening device for any in-court proceedings, and should she
 8 choose to do so, she must file a motion to request that accommodation at least 3 days in advance
 9 of any scheduled hearing to ensure the court has the proper equipment available.

10 Fox's request that I schedule hearings in the afternoon wherever possible is granted.

11 Fox requests that I permit simplified exhibit formatting to accommodate her disabilities.
 12 This request is denied. It is unclear: (1) what exhibits she is referring to, (2) what changes to the
 13 standard exhibit formatting Fox wants or needs, and (3) how the exhibit formatting
 14 requirements in place impose a disproportionate burden on her. Should Fox have a specific
 15 request for the filing of a specific exhibit(s), she may file a motion setting forth her request. For
 16 those reasons, Fox's renewed request for procedural leniency due to disability is granted in part
 17 and denied in part.

18 ***2. Fox's motion for judicial estoppel (ECF No. 103) is denied.***

19 Fox also filed a motion for judicial estoppel in which she requests that I grant the motion
 20 so as to prevent HopeLink from "boldly and blatantly deceiving" the court. ECF No. 103 at 7. Fox
 21 argues that HopeLink's motion to dismiss "directly contradicts" its prior representations in its
 22 other filings. *Id.* at 5. HopeLink opposes the motion and argues that Fox has mischaracterized its
 23 motion to dismiss and that it has not directly contradicted itself. *See generally* opp'n, ECF No. 116.
 24 As previously explained,⁴ judicial estoppel "generally prevents a party from prevailing in one
 25

26 ³ For ease, I provide a link to the form here: <https://www.nvd.uscourts.gov/wp-content/uploads/2020/04/Consent-by-Pro-Se-Non-Prisoner-to-receive-NEFs-4-15-20.pdf>.

⁴ ECF No. 93 at 2.

1 phase of a case on an argument and then relying on a contradictory argument to prevail in
 2 another phase.” *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (quoting *Pegram v. Herdrich*, 530
 3 U.S. 211, 217, n.8 (2000)). The court has examined Fox’s arguments and finds that HopeLink has
 4 not advanced contradictory arguments at this time, so her request is denied.

5 ***3. Fox’s motions for judicial notice (ECF Nos. 100, 103, 104, 105) are denied.***

6 Fox’s motion also requests that I take judicial notice⁵ of (1) HopeLink’s IRS Form 990,
 7 (2) HopeLink’s 2022–23 Annual Report, and (3) HopeLink’s Signed Rapid Rehousing
 8 Agreement, which she attached to her motion. ECF No. 103 at 6; *see* IRS Form 990, Pl.’s Ex 2,
 9 ECF No. 103-1; 2022–23 Ann. Rep., Pl.’s Ex. 1, ECF No. 103-3, Pl.’s Ex. 3, Housing agreement, ECF
 10 No. 103-2. In its opposition, HopeLink argues that these documents are outside of the pleadings
 11 and cannot be considered, Fox has mischaracterized and misinterpreted the documents, and the
 12 contents of the documents for which she requests judicial notice are reasonably in dispute. ECF
 13 No. 116 at 3–7. Indeed, at any stage of a proceeding, courts may take judicial notice of (1) facts
 14 not subject to reasonable dispute and “generally known within the trial court’s territorial
 15 jurisdiction” and (2) adjudicative facts, which “can be accurately and readily determined from
 16 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(1)–(2). Fox’s
 17 request for judicial notice must be denied for several reasons. First, as to the “IRS Form 990,”
 18 HopeLink correctly asserts that the attachment is not an IRS Form 990 but is instead a report
 19 created by independent auditors so it potentially contains facts that are in reasonable dispute
 20 and its accuracy can be questioned. Accordingly, I will not take judicial notice of it.

21 As for HopeLink’s 2022–23 Annual Report and Signed Rapid Rehousing Agreement,
 22 these documents are outside the pleadings. I previously informed Fox: “To the extent [she]
 23 wants me to take judicial notice of public filings as part of her opposition to defendants’ motion

24 ⁵ Fox is advised that her motion requesting two forms of relief violates the local rules. *See* Local Rule IC 2-
 25 2(b) (“For each type of relief requested or purpose of the document, a separate document must be filed
 26 and a separate event must be selected for that document.”). Fox is again cautioned that failure to comply
 with the local rules may result in sanctions. *See* ECF No. 93 at 2 (reminding Fox she must comply with
 the local rules). The local rules can be found online at <https://www.nvd.uscourts.gov/wp-content/uploads/2020/04/Local-Rules-of-Practice-Amended-2020.pdf>.

1 to dismiss, she may ask the court to do so when she files her opposition to the motion.” Order,
2 ECF No. 93 at 2. Although Fox attached many documents to her complaint, she did not attach
3 either of these two documents. Instead, she attached these two documents to her motion for
4 judicial estoppel. See ECF No. 103. “When ruling on a Rule 12(b)(6) motion to dismiss, if a
5 district court considers evidence outside the pleadings, it must normally convert the 12(b)(6)
6 motion into a Rule 56 motion for summary judgment, and it must give the nonmoving party an
7 opportunity to respond.” *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003). Therefore,
8 “there is a general rule against referencing evidence outside the four corners of the complaint.” *In*
9 *re Bare Escentuals, Inc. Sec. Litig.*, 745 F. Supp. 2d 1052, 1067 (N.D. Cal. 2010). A court may take
10 judicial notice of a document if it is not attached to the complaint if the plaintiff “refers
11 extensively to the document or the document forms the basis of the plaintiff’s claims.” *Ritchie*,
12 342 F.3d at 908. Because the FAC makes no mention whatsoever of the annual report or the
13 rapid rehousing agreement, these documents cannot be incorporated into the complaint and it is
14 not proper for me to review them while ruling on a Rule 12(b)(6) motion. Additionally, because
15 the facts within these documents are reasonably in dispute, I cannot take judicial notice of them.
16 As such, Fox’s motion for judicial estoppel and request for judicial notice is denied.

17 Fox also filed three additional motions for judicial notice. See ECF Nos. 100, 104, and 105.
18 Those motions are denied for the same reasons, that is, the documents Fox asks that I take
19 judicial notice of are outside of the complaint and therefore improper for consideration when
20 resolving a motion to dismiss. Additionally, in these motions, Fox does not identify specifically
21 what facts for which she would like the court to take judicial notice, she just requests that I take
22 judicial notice of large swaths of documents and databases. See generally ECF Nos. 100, 104 and
23 105; see also *Malfavon v. Wal-Mart Assocs., Inc.*, 2024 U.S. Dist. LEXIS 71137, at *2 (E.D. Cal. Apr. 18,
24 2024) (denying a request for judicial notice when the party did not identify specific facts from
25 each document that should be judicially noticed).⁶ Consequently, these motions are also denied.

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⁶ Two of Fox’s motions for judicial notice also include requests for judicial estoppel. See ECF No. 104 at 4;
ECF No. 105 at 6. I reviewed the filings and once again find that HopeLink has not put forth any

1 ***4. Fox’s motion to compel (ECF No. 123) is denied.***

2 Lastly, Fox has filed a motion “to compel a federal audit of HopeLink of Southern Nevada
3 and demand for criminal investigation into fraudulent misuse of federal funds.” Mot., ECF No.
4 123; Errata, ECF No. 124. In the errata to her motion, Fox clarifies that the court (1) compel a
5 forensic audit of HopeLink’s financial records as related to federal housing funds, (2) compel
6 disclosure of relevant financial records, and (3) refer the case to the U.S. Attorney’s Office and
7 the U.S. Department of Housing and Urban Development’s Office of Inspector General for
8 further investigation. ECF No. 124 at 2. This motion is fully briefed. *See* HopeLink’s resp., ECF
9 No. 125, Pl.’s reply, ECF No. 126.

10 Fox’s motion is unsupported by points and authorities and it is therefore denied. *See* LR
11 7-2(a) (“The motion must be supported by a memorandum of points and authorities.”). Further,
12 the requests that I compel a forensic audit of HopeLink’s financial records and “disclosure of
13 relevant financial records” are vague and overbroad. Additionally, “it is well settled that private
14 citizens lack a judicially cognizable interest in the prosecution . . . of another.” *Ryan v. Lopez*, 2014
15 U.S. Dist. LEXIS 71690, at *7 (D. Or. May 23, 2014) (citing *Lecke v. Timmerman*, 454 U.S. 83, 86
16 (1981) (per curium)) Therefore, this court to cannot “refer” the matter to the United States
17 Attorney’s Office for investigation based on Fox’s allegations alone. *See id.*; *see also see also United*
18 *States v. Nixon*, 418 U.S. 683, 693–94 (1974) (finding that “the Executive Branch has exclusive
19 authority and absolute discretion to decide whether to prosecute a case” and “Congress has
20 vested in the Attorney General the power to conduct the criminal litigation of the United States
21 Government”). This motion is denied.

22 **B. Ryan Kovacs, Le Croque Mitaine LLC, Orange Realty Group LLC, and Jason**
23 **Mattson’s motion to dismiss (ECF No. 77) is granted.**

24 In their motion to dismiss, the Kovacs defendants argue that Fox’s FAC must be
25 dismissed because Fox fails to “provid[e] facts supporting the required elements of her claims[.]”

26 _____
contradictory arguments at this time. Fox is again reminded to follow the local rules relating to filing a
separate motion for each requested relief.

1 and the FAC “contains only mere recitations of the elements of her claims.” ECF No. 77 at 2.⁷ In
 2 her complaint, Fox brings both federal and state claims against the Kovacs defendants. *See*
 3 *generally* ECF No. 66. I address the federal claims first.

4 Fox alleges that the Kovacs defendants have improperly retaliated against her in
 5 violation of the Fair Housing Act (FHA) because she requested the necessary repairs to her
 6 apartment. *Id.* at ¶ 54. Fox states, “[r]ather than addressing the severe hazards in the apartment,
 7 they responded by issuing false warning notices, further neglecting repairs, and creating an
 8 environment that was hostile, intimidating, and unbearable for Plaintiff and her family.” *Id.* In
 9 their motion, the Kovacs defendants argue that Fox has failed to state a claim for which relief
 10 can be granted because she provides no information in her FAC explaining what “false warning
 11 notices” and a “hostile, intimidating, and unbearable” environment means, and she provides no
 12 information detailing what form the retaliation took. ECF No. 77 at 8. Additionally, the Kovacs
 13 defendants point out that Fox does not provide any information as to “whom she made repair
 14 requests, who began sending false warning notices,” and “how close these notices were in time
 15 to the repair requests.” *Id.*

16 Under 42 U.S.C. § 3617, it is unlawful to “coerce, intimidate, threaten, or interfere with
 17 any person in the exercise or enjoyment of . . . any right granted or protected by [the FHA]. “As
 18 with any retaliation claim, [courts must] apply the familiar burden-shifting analysis established
 19 by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).” *Scoggins v. Falcon Ct.*,
 20 2025 U.S. Dist. LEXIS 59060, at *2 (E.D. Cal. Mar. 27, 2025) (quoting *Walker v. City of Lakewood*,
 21 272 F.3d 1114, 1128 (9th Cir. 2001)). To establish a prima facie case of retaliation under the FHA,
 22 a plaintiff must allege (1) she engaged in protected activity; (2) the defendant(s) subjected her to
 23 an adverse action; and (3) “a causal link exists between the protected activity and the adverse
 24 action.” *Walker*, 272 F.3d at 1128 (citing *Steiner v. Showboat Operating Co.*, 25 F.3d 1459, 1464 (9th
 25 Cir. 1994)). “Protected activity” covers many types of actions but must relate to a plaintiff
 26

⁷ This motion is fully briefed. *See* Pl.’s Resp., ECF No 101; Kovacs defs.’ Reply, ECF No. 106.

1 exercising her rights “granted or protected” by the FHA. *Macon v. Proud Ground Org.*, 2021 U.S.
 2 Dist. LEXIS 143910, at *17–18 (D. Or. July 30, 2021) (citing 42 U.S.C. § 3617).

3 Fox fails to adequately allege that the alleged retaliation was caused by her repair
 4 requests. The court does find that Fox broadly alleges that as a result of her alleged disability,⁸
 5 defendants failed to address the numerous issues with her housing situation. But Fox provides
 6 no information about where or whom she submitted the repair requests, nor any identification
 7 of who issued the “false warning notices,” or how close in time said notices were issued in
 8 relation to the repair requests. Without this information, I cannot properly ascertain whether
 9 there is a causal link between the protected activity and the alleged retaliation, and I would be
 10 forced to speculate as to the existence of that causal link. *See Rick-Mik Enters. v. Equilon Enters. LLC*,
 11 532 F.3d 963, 973 (9th Cir. 2008) (granting motion to dismiss when the complaint lacked
 12 “factual specificity require to ‘raise a right to relieve above the speculative level’”) (citing
 13 *Twombly*, 550 U.S. at 555). Moreover, defendants cannot properly defend against the case if the
 14 complaint fails to set forth the allegations against them. *See Jones v. Cmty. Redevelopment Agency*, 733
 15 F.2d 646, 649 (9th Cir. 1984) (explaining that although the Federal Rules set forth a flexible
 16 pleading policy, a complaint must give fair notice to each defendant of the factual allegations
 17 against them and tie these specific factual allegations with each of the elements of each legal
 18 claim, stated plainly and concisely.). Because Fox has failed to comply with the requirements of
 19 Rule 8(a)(2) of the Federal Rules of Civil Procedure, this claim against the Kovacs defendants
 20 must be dismissed.⁹

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 23 ⁸ As explained further herein however, I do not find Fox has properly alleged her disability.

24 ⁹ Fox’s claim also contains conclusory allegations that cannot survive a motion to dismiss. *See* ECF No. 66
 25 at ¶ 54 (“defendants engaged in malicious retaliation” and created an environment that was “hostile,
 26 intimidating and unbearable”); *see also Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007) (“Conclusory
 allegations . . . are insufficient to defeat a motion to dismiss.”); *Iqbal*, 556 U.S. at 678 (“A pleading that
 offers ‘labels and conclusions’ . . . ‘will not do.’” (quoting *Twombly*, 550 U.S. at 555)). Because Fox’s claim
 contains legal conclusions and because it lacks sufficient facts to state a claim that is plausible on its face.
 So, the retaliation claim is dismissed without prejudice on this ground as well.

1 Fox also alleges that the Kovacs defendants discriminated against her based on
 2 disability. ECF No. 66 at ¶¶ 123–40. Fox claims to bring this cause of action under “the [FHA],
 3 42 U.S.C. § 3601 et seq., the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., and
 4 Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.” *Id.* at ¶ 124. Liberally construing the
 5 complaint, I find that Fox fails to properly allege her disability. Rather, the FAC merely alleges
 6 “disabled.” *Id.* at ¶¶ 3, 17, 26, 29, 126, 145. Fox does not however allege specifically what her
 7 disability is, how it affects her, or how she is qualified as a person in a protected class. To
 8 properly allege the element of disability, a plaintiff must allege their disability falls within the
 9 ADA, and some factual “specificity.” *See Bresaz v. Cnty. of Santa Clara*, 136 F. Supp. 3d 1125, 1136
 10 (N.D. Cal. 2015). The ADA defines disability as: (1) a physical or mental impairment that
 11 substantially limits one or more major life activities, (2) a record of having such an impairment,
 12 or (3) being regarded as having such an impairment. *See* 42 U.S.C. § 12102.

13 Fox also fails to allege how each defendant allegedly discriminated against her, what
 14 reasonable accommodations she requested, when those requests were made, nor does she
 15 explain how such requests were, in fact, reasonable. Without this information, the FAC lacks
 16 “factual content that allows the court to draw the reasonable inference that the defendant is
 17 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).
 18 Consequently, Fox has failed to state a claim of disability discrimination, so this claim is
 19 dismissed without prejudice.

20 Remaining are Fox’s claims against the Kovacs defendants for breach of the implied
 21 warranty of habitability; negligence per se; constructive eviction; breach of the covenant of quiet
 22 enjoyment; intentional infliction of emotional distress; negligent infliction of emotional distress;
 23 negligence; breach of contract; breach of the implied covenant of good faith and fair dealing;
 24 tortious interference with contractual relations; negligent hiring, retention, and supervision;
 25 fraudulent misrepresentation; and unjust enrichment. Federal courts are courts of limited
 26 jurisdiction, and they may exercise supplemental jurisdiction over state-law claims that “are so

related to claims in the action” that they form the same case or controversy with the claims over which the court has jurisdiction. 28 U.S.C. § 1367(a). Once a plaintiff’s federal claims are gone, the court may decline to exercise supplemental jurisdiction over remaining state-law claims. *Id.* at § 1367(c)(3); *Harrell v. 20th Century Ins. Co.*, 934 F.2d 203, 205 (9th Cir. 1991) (“[I]t is generally preferable for a district court to remand remaining pendent claims to state court.”). Because I have dismissed Fox’s federal claims against the Kovacs defendants, I decline to exercise supplemental jurisdiction over the remaining state law claims against them at this time, so I dismiss them without prejudice. The court may reconsider dismissal if Fox files a second amended complaint, that complies with this order, that sufficiently alleges federal claims. Accordingly, the Kovacs defendants’ motion to dismiss is granted, so Fox’s claims against them are dismissed without prejudice.

C. HopeLink’s motion to dismiss (ECF No. 82) is granted.

Fox brings the same claims against HopeLink as she does against the Kovacs defendants. *See generally* ECF No. 66. Additionally, Fox alleges that HopeLink violated § 504 of the Rehabilitation Act of 1973. *Id.* at ¶¶ 71–76. I address the federal claims first.

Fox’s claims that HopeLink retaliated against her in violation of the FHA, and generally “discriminated against her based on disability” are both dismissed without prejudice for the same reasons explained above, that is, she fails to properly allege her disability with any specificity, how it affects her, or how she is qualified as a person in a protected class, nor what sort of or when she made request for reasonable accommodations. *See supra*, pg. 12. Accordingly, this claim against HopeLink is dismissed without prejudice.

Fox also alleges that HopeLink violated § 504 of the Rehabilitation Act by “placing Plaintiff in a rental unit that was uninhabitable and failing to provide the accommodations necessary to safeguard her health[.]” ECF No. 66 at ¶ 72. She further alleges that “[t]he persistent plumbing issues, rampant mold, and vermin infestations created a living environment that was not only unsafe but actively dangerous to Plaintiff’s disability and pregnancy.” *Id.*

1 HopeLink argues that Fox fails to state a claim for breach of § 504 because she does not allege
2 that she was denied any benefit by HopeLink solely by reason of her disability. Mot to dismiss,
3 ECF No. 82 at 11. I agree.

4 Section 504 of the Rehabilitation Act provides that “no otherwise qualified individual
5 with a disability . . . shall, solely by reason of her or his disability, be excluded from the
6 participation in, be denied the benefits of, or be subjected to discrimination under any program
7 or activity receiving Federal financial assistance[.]” 29 U.S.C. § 794. To bring a § 504 claim, Fox
8 must show (1) she is an individual with a disability; (2) she is otherwise qualified to receive
9 benefits; (3) she was denied benefits of the program solely by reason of her disability; and (4) the
10 program receives federal financial assistance. *Updike v. Multnomah Cnty.*, 870 F.3d 939, 949 (9th
11 Cir. 2017).

12 A review of the complaint demonstrates that Fox’s claim falls short of the Rule 8
13 pleading standard. Fox again fails to describe what her disability is or how it is a qualifying
14 disability; she also fails to allege how she is otherwise qualified to receive benefits, what benefits
15 she was allegedly denied, and how any alleged benefit denial was *because* of her disability. Fox
16 has failed to plead the basic elements of a § 504 claim. Therefore, her claim is dismissed without
17 prejudice.

18 I also dismiss without prejudice the state law claims against HopeLink for the same
19 reasons I dismissed them against the Kovacs defendants, that is, I decline to exercise
20 supplemental jurisdiction over the remaining state-law claims at this time. The court may
21 reconsider dismissal if Fox files a second amended complaint, that complies with this order, and
22 sufficiently alleging her federal claims.

23 D. Leave to amend

24 If the court grants a motion to dismiss for failure to state a claim, leave to amend should
25 be granted unless it is clear that the deficiencies of the complaint cannot be cured by
26 amendment. *DeSoto*, 957 F.2d at 658. As it is not wholly clear that amendment would be futile, I

1 grant Fox leave to amend all her claims against all defendants. Should Fox choose to file a
2 second amended complaint (SAC), she must do so no later than **May 29, 2025**. Further, if Fox
3 elects to file a SAC, she may not bring any new claims or defendants. Fox is cautioned that her
4 failure or inability to offer *specific facts* to support each element of her claims against each of the
5 defendants will likely result in the dismissal of the case with prejudice.

6 **IV. Conclusion**

7 IT IS THEREFORE ORDERED that defendants Ryan Kovacs, Le Croque-Mitaine, LLC,
8 Orange Realty Group LLC, and Jason Mattson's motion to dismiss [ECF No. 77] is GRANTED.

9 IT IS FURTHER ORDERED that HopeLink of Southern Nevada's motion to dismiss
10 [ECF No. 82] is GRANTED.

11 IT IS FURTHER ORDERED that Fox's claims are **dismissed without prejudice and**
12 **with leave to amend**. Should Fox choose to file a second amended complaint she must do so by
13 **May 29, 2025**. If Fox does not file a second amended complaint by this deadline, or her amended
14 complaint fails to state a cognizable claim against the defendants, this action may be dismissed
15 with prejudice. If Fox elects to file a SAC, she may not bring any new claims or new defendants.

16 IT IS FURTHER ORDERED that Fox's motion for sanctions for bad faith litigation
17 conduct [ECF No. 80] is DENIED.

18 IT IS FURTHER ORDERED that Fox's motion for leave to file excess pages [ECF No.
19 90] is DENIED as moot.

20 IT IS FURTHER ORDERED that Fox's renewed request for procedural leniency [ECF
21 No. 96] is GRANTED in part and DENIED in part, as set forth in this order.

22 IT IS FURTHER ORDERED that Fox's motion for judicial estoppel and judicial notice
23 [ECF No. 103] is DENIED.

24 IT IS FURTHER ORDERED that Fox's motions for judicial notice [ECF Nos. 100, 104,
25 and 105] are DENIED.

26 IT IS FURTHER ORDERED that Fox's surreplies [ECF Nos. 112, 113] are STRICKEN.

1 IT IS FURTHER ORDERED that Fox's motion to compel a federal audit of HopeLink of
2 Southern Nevada and demand for criminal investigation into fraudulent misuse of federal funds
3 [ECF Nos. 123, 124] is DENIED.

4 Dated: April 30, 2025

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7 Cristina D. Silva
8 United States District Judge
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